

Background Paper

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FEDERAL POLLUTION LEGISLATION

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FEDERAL POLLUTION LEGISLATION

INTRODUCTION

This paper summarizes the Canadian federal legislation that regulates and prohibits "pollution," which is generally understood to imply the contamination or disturbance of the environment by the emission or discharge of some noxious substance. The many federal statutes containing provisions that affect the natural environment, except where they involve pollution control, are beyond the scope of this survey. For ease of reference, legislation is classified according to the type of pollution to which it applies.

GENERAL LEGISLATION ON POLLUTION

A. Departmental Responsibility

The Department of the Environment was created in 1970 pursuant to the Department of the Environment Act, R.S.C. 1985, c. E-10. It has the duty to preserve and enhance the quality of the natural environment, including water, air and soil quality. The Minister of the Environment is responsible for setting up programs to promote the establishment of objectives for standards to control pollution. Responsibility for specific pollution legislation is divided among various departments, including the Departments of Transport, Energy, Mines and Resources, and Fisheries and Oceans, as well as Environment.

B. Environmental Quality Objectives, Guidelines
and Codes of Practice

The Canadian Environmental Protection Act (CEPA), R.S.C. 1985, c. 16 (4th Supp.), which both the Minister of the Environment and the Minister of National Health and Welfare are responsible for administering,

is the new centrepiece of the federal government's environmental protection efforts. It consolidated much of the federal legislation controlling environmental pollution, particularly that related to toxic substances.

Under Part I of the Act, the Minister of the Environment may establish environmental quality monitoring systems and research programs and formulate pollution control plans. He is also required to establish environmental quality objectives and guidelines, limits for the amounts of substances that may be released, and environmental codes of practice. The Minister of National Health and Welfare is directed to undertake the same task with respect to the elements of the environment that may affect the life and health of Canadians.

C. Environmental Assessment

There is an administrative procedure for assessing the environmental consequences of certain federal activities.⁽¹⁾ The procedure is applicable to any federal department or agency activities that might have significantly adverse environmental effects or to which the federal government makes a financial contribution, as well as to those activities that may have an environmental effect on areas of federal responsibility or which are located on lands administered by the federal government. Federal Crown corporations are not required, but are rather invited, to participate.

The system is self-assessing; as early as possible in the planning process, the potential environmental effects of an activity, as well as its social effects and aspects of public concern, are considered. Where the implications are significant, the matter is referred to the Minister of the Environment for public review by an Environmental Assessment Panel. The Federal Environmental Assessment Review Office coordinates and administers the system.

(1) Environmental Assessment and Review Process Guidelines Order, SOR/84-467. See also Environmental Assessment Panel Procedure and Rules, promulgated pursuant to the Department of the Environment Act. Legislation to replace the Guidelines Order received first reading in the House of Commons on 18 June 1990. The proposed Act, Bill C-78, is entitled the Canadian Environmental Assessment Act.

D. Criminal Code Offences⁽²⁾

A number of provisions of the Criminal Code, R.S.C. 1985, c. C-46 are applicable to pollution situations. A "common nuisance" (s. 180) is committed if one performs an unlawful act or fails to discharge a legal duty and thereby endangers the lives, safety, health, property or comfort of the public, or if one obstructs the public in the exercise or enjoyment of a common right. The maximum penalty for this indictable offence is two years' imprisonment. The offence of "mischief" (s. 430) is committed, inter alia, if one wilfully performs an act that obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property or causes actual danger to life or if one wilfully refrains from some act with the same result. This behaviour may constitute either a summary or indictable offence.

Another relevant offence is the prohibition of criminal negligence. Section 219(1) provides in part that "every one is criminally negligent who ... shows wanton or reckless disregard for the lives or safety of other persons."

E. Emergency Measures

Part I of the Emergencies Act, R.S.C. 1985, c. 22 (4th Supp.), enables the Governor in Council to take special temporary measures in the event of a national emergency caused by pollution. Such measures may include prohibiting travel to the affected area, evacuating persons and removing personal property, directing persons to provide essential services, regulating the distribution of goods and services, establishing emergency shelters and hospitals, repairing damage to works or undertakings and eliminating or alleviating damage to the environment. The Act provides that a public welfare emergency cannot be declared until the provinces involved have been consulted. Furthermore, if the emergency is restricted

(2) For further discussion see Law Reform Commission of Canada, Crimes Against the Environment, Working Paper No. 44, 1985. Also, Department of Justice, Crimes Against the Environment, Law Reform Commission's Working Paper No. 44, Summary of Consultations, 27 April 1987.

to one province, the federal government cannot make a declaration unless it is requested to do so by the lieutenant governor in council of that province.

There are also special provisions in CEPA to deal with specific emergency situations regarding toxic substances and the release of emissions or effluents from federal works or undertakings. The Minister may make an interim order, effective immediately, to add a substance to the List of Toxic Substances should immediate action be required to deal with a significant danger to the environment or to human life or health (section 35). Similarly, any person who owns or has control of a substance which is released contrary to a regulation has the duty to "take all reasonable emergency measures consistent with public safety" (sections 36(1) and 57(1)(b)).

F. Federal Works, Lands and Undertakings

Part IV of CEPA gives the Minister of the Environment the responsibility for establishing environmental protection guidelines for government departments, boards, agencies and Crown corporations. The Environment Minister may also recommend regulations for the protection of the environment, with the concurrence of the Minister who administers those works, undertakings or lands to which they will apply. In addition, the Governor in Council may make regulations prescribing limits on the release of emissions and effluents and specifying waste handling and disposal practices. Any release of a substance into the environment in contravention of those regulations entails a duty to report to an inspector, take all reasonable emergency measures consistent with public safety, and notify members of the public who may be adversely affected. A protection for "whistle-blowing" is extended to government employees who make a report (section 58(4)). Should the department, board or agency not take proper measures, it may be liable for the incidental costs and expenses incurred by an inspector who does.

The Territorial Lands Act, R.S.C. 1985, c. T-7, permits the federal government to make regulations for the protection, control and use

of territorial lands, including the establishment of land management zones to protect the ecological balance or physical characteristics of such lands.⁽³⁾ The regulations provide for the prevention of soil erosion, and waste and sewage disposal and require areas to be returned to their original state once the land use is completed.

Regulations under the Indian Act, R.S.C. 1985, c. I-5, as amended, prohibit the use of an Indian reserve for operating a garbage dump or the use of any land therein to store, dispose of, or burn any waste, unless authorized by permit.⁽⁴⁾

Under the Public Works Health Act, R.S.C. 1970, c. P-39, regulations require a camp to be maintained according to every recognized standard of sanitation, including the supply of potable water, the disposal of refuse, latrine sanitation and sewage disposal. Public health ordinances have also been enacted in both the Yukon and Northwest Territories similar to the health acts in force in most provinces.⁽⁵⁾

The National Parks Act, R.S.C. 1985, c. N-14, as amended, provides that regulations may be made for the protection of fish including the prevention and remedying of any obstruction or pollution of waterways, the preservation of public health and the prevention of disease, and the abatement and prevention of nuisance. Regulations made under the Act prohibit the deposit of refuse or other substances in domestic water supplies, require the abatement of any nuisance, and provide for garbage disposal within parks. They also prohibit the pollution of any stream or body of water in the park or the setting up of any privy which is not connected to a public sewage system or septic tank, except by permit. There are also regulations dealing with the water and sewer systems.⁽⁶⁾

(3) See Territorial Land Use Regulations, CRC 1978, c. 1524, as amended.

(4) Indian Reserve Waste Disposal Regulations, CRC 1978, c. 960.

(5) Yukon Public Health Ordinance, 1971, c. P-8; Northwest Territories, Public Health Ordinance, 1974, c. P-10.

(6) National Parks Garbage Regulations, SOR/80-217, as amended. See also National Parks Water and Sewer Regulations, CRC 1978, c. 1134, as amended; National Parks General Regulations, SOR/78-213, as amended.

TOXIC SUBSTANCES AND HAZARDOUS WASTE⁽⁷⁾

Part II of CEPA regulates toxic substances, that is, substances which may endanger the environment or human health. If such a substance is entering or may enter the environment, the Ministers of the Environment and National Health and Welfare must assess whether that substance should be added to the List of Toxic Substances in Schedule I to the Act. On the recommendation of the Ministers, the Governor in Council may make an order adding the substance to the List and make regulations respecting all aspects of its manufacture, use, processing, sale, import or export, storage, handling, transport, disposal, and monitoring ("cradle to grave management"). Should the Ministers decide not to recommend adding a substance to the List, subsections 13(2) and 59(1) provide for a review procedure, subject to ministerial approval.

There are also three separate lists for regulating the import or export of toxic substances: a List of Prohibited Substances; a List of Toxic Substances Requiring Export Notification; and a List of Toxic Substances Authorities. Similarly, there are prescribed conditions for the import or export of hazardous wastes and fuels.

Equivalency provisions in subsections 34(5) to (10) of CEPA state that federal toxic substances regulations would not apply in a province where provisions "equivalent" to the relevant federal regulations were in force. A federal-provincial advisory committee will advise the Minister on proposed regulations relating to the emissions, release and disposal of toxic substances (section 6).

These provisions replace the old Environmental Contaminants Act, S.C. 1976, c. 72, under which regulations were passed regarding chlorobiphenyl, chlorofluorocarbon, mirex, polybrominated biphenyl and polychlorinated terphenyl. These regulations will be rolled over to CEPA.

(7) For further information please note two other Research Branch publications, 88-11E, Toxic Substances: Federal Provincial Control, and BP-159E, Hazardous Waste Management in Canada.

WATER POLLUTION

The Fisheries Act, R.S.C. 1985, c. F-14, prevents any person from depositing or permitting the deposit of a "deleterious substance" of any type in any water frequented by fish, except as authorized.⁽⁸⁾ Ballast, coal, ashes, stones or other prejudicial or harmful substances may not be thrown overboard in any river or harbour, or in any water where fishing is carried on, nor may the remains or offal of fish or marine animals be deposited upon or along shorelines below the high water mark.

The Fisheries Act also makes it an offence for any person to carry on any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat, unless authorized by the Minister or under regulations. The Act also prohibits any person from destroying fish by any means other than fishing.

The courts may punish any contraventions of the Act by fines, injunction or any action which they feel may prevent further offences. The dumping of a deleterious substance in contravention of the Act renders a person liable for all costs and expenses incurred by the federal or provincial governments in taking mitigating action as well as for any loss of income by commercial fishermen. In addition, no civil remedy is affected by the provisions of the Act.

The Minister may require plans and studies of and information on a project where any work or undertaking might result in the deposit of deleterious substances or the alteration of fish habitat, and may then restrict, modify or prohibit the work. Provision is also made for inspections and the reporting of deposits.

Regulations under the Act deal with the quality of the water and the contaminant standards applicable to certain industries (e.g., pulp and paper⁽⁹⁾ and chlor-alkali mercury plants,⁽¹⁰⁾ petroleum

(8) S. 36(3).

(9) Pulp and Paper Effluent Regulations, CRC 1978, c. 830.

(10) Chlor-Alkali Mercury Regulations, CRC 1978, c. 811.

refineries,⁽¹¹⁾ metal mining,⁽¹²⁾ meat and poultry products plants,⁽¹³⁾ and potato processing plants.⁽¹⁴⁾ The Act allows regulations to be enacted exempting specific sites or operations.

The Canada Shipping Act, R.S.C. 1985, c. S-9,⁽¹⁵⁾ contains provisions designed to protect the environment from pollution, especially oil spills caused by ships, and ensure that those responsible for pollution will assume the financial responsibility. Pollution is comprehensively defined as any action which degrades or alters water to the extent that its use is detrimental to man or any animal, fish or plant useful to man.⁽¹⁶⁾ Control may be exercised over the navigational equipment of ships carrying pollutants; the types and quantities of pollutants that may be carried; the equipment required for the handling of pollutants; the number and qualifications of personnel on these ships; the procedures and practices to be followed to ensure safe navigation; and the establishment of traffic routes. A ship which is in distress, stranded, sunk or abandoned and is likely to discharge a pollutant may be destroyed or removed.

The owner of a ship which pollutes is liable for the costs of remedying the condition. Owners of ships carrying pollutants must

(11) Petroleum Refinery Liquid Effluent Regulations, CRC 1978, c. 828.

(12) Metal Mining Liquid Effluent Regulations, CRC 1978, c. 819.

(13) Meat and Poultry Products Plant Liquid Effluent Regulations, CRC 1978, c. 818.

(14) Potato Processing Plant Liquid Effluent Regulations, CRC 1978, c. 829.

(15) This Act was amended by R.S.C. 1985, c. 6 (3rd Supp.). New provisions relating to the Maritime Pollution Claims Fund, maritime pollution prevention and control and penalty provisions have not yet been proclaimed into force. Other amendments, also not yet in force, would implement various international conventions on maritime pollution to which Canada is a party.

(16) This is basically the same definition used in the Canada Water Act ("waste"), the Fisheries Act ("deleterious substance"), the Arctic Waters Pollution Act ("waste"), and the Northern Inland Waters Act ("waste").

provide evidence of financial responsibility and a per tonne fee is to be charged for all oil imported or shipped from any place in Canada. The Maritime Pollution Claims Fund is established to pay claims resulting from pollution including claims from fishermen for loss of income. A fine of up to \$100,000 for discharging a pollutant in contravention of the Act may be imposed and the offending ship may be seized temporarily.

Regulations under the Act control the permissible density of smoke emissions,⁽¹⁷⁾ prohibit the discharge of garbage,⁽¹⁸⁾ oil or oil mixtures⁽¹⁹⁾ and other pollutants⁽²⁰⁾ and regulate the discharge of sewage from ships.⁽²¹⁾ They also deal with payments into and claims from the Maritimes Pollution Claims Fund.⁽²²⁾ Regulations have also been promulgated regarding shipments of liquefied petroleum, chemical carriers and the shipping of dangerous goods.

The Canada Water Act R.S.C. 1985, c. C-11, enables the federal government to cooperate with the provinces to provide comprehensive water resource management programs. Where no agreement is reached with the provinces, the federal government may implement its own programs in federal waters and in inter-jurisdictional and international or boundary waters where there is a significant national interest.

Specifically in regard to pollution, the Act prohibits the deposit of waste of any type in any water designated as a "water quality management area" or in any place where the deposit of waste would enter such water, except as permitted by regulation. A \$5,000 fine may be levied for contravention of this section. Regulations may be made with respect to water quality management areas as to the quantities of waste which may be deposited and under what conditions, the charges to be made

(17) Air Pollution Regulations, CRC 1978, c. 1404.

(18) Garbage Pollution Prevention Regulations, CRC 1978, c. 1424.

(19) Oil Pollution Prevention Regulations, CRC 1978, c. 1454, as amended.

(20) Pollutant Substances Regulations, CRC 1978, c. 1458, as amended.

(21) Great Lakes Sewage Pollution Prevention Regulations, CRC 1978, c. 1429, as amended.

(22) CRC 1978, c. 1444, and CRC 1978, c. 1423, as amended.

for the treatment of waste, analysis of waste samples, effluent discharge fees to be paid for the deposit of waste, and the water quality standards for specific areas.

Part III of the Canadian Environmental Protection Act allows regulations to be made in respect of the maximum permissible concentrations of any prescribed nutrients in any cleansing agent. Regulations control the phosphorous concentration in such agents.(23)

The Arctic Waters Pollution Prevention Act, R.S.C. 1985 c. A-12, as amended, prohibits the deposit of waste in Arctic waters or in any place where such deposits may enter Arctic waters except as authorized by regulation. In the case of persons exploring, developing and exploiting natural resources, persons carrying on any undertaking in the Arctic, and shipowners, liability includes the costs of remedying conditions resulting from the deposit of waste or of mitigating the results which may be reasonably expected to result as well as the costs of the actual loss or damage incurred. The Act provides for absolute liability without the necessity of proving fault or negligence, and for a fine of up to \$100,000 for any ship and \$5,000 for any person.

Plans may be required for works to be constructed in Arctic waters and which are likely to result in the deposit of wastes. The work may be prohibited unless required modifications to the plans are made. In regard to shipping, regulations may prohibit shipping in certain "safety control zones" unless the vessels comply with standards for hull and fuel tank construction, ship personnel, the type and quantity of cargo and the construction of machinery and equipment and navigational aids. Pollution prevention officers inspect areas where waste may be deposited.(24)

The Northern Inland Waters Act, R.S.C. 1985, c. N-25, vests in the Crown the property and the right to the use and flow of waters in

(23) Phosphorous Concentration Control Regulations, CRC 1978, c. 393, as amended.

(24) The main regulations passed under this Act are the Arctic Shipping Pollution Prevention Regulations, CRC 1978, c. 353, as amended; the Arctic Waters Pollution Prevention Regulations, CRC 1978, c. 354, as amended; and the Arctic Waters Experimental Pollution Regulations, 1978, SOR/78-417, as amended.

the Northwest Territories and Yukon, with certain exceptions. Waste is not to be deposited in any of these waters or in any place where it may enter them except as authorized by licence or regulation. Water Boards established by the Act may issue licences for using the water, providing, inter alia, that the waste produced will be treated and disposed of in a manner appropriate to the maintenance of water quality standards. Regulations may be made prescribing water quality standards and the quantities of waste that may be deposited.⁽²⁵⁾ Water quality inspectors may enter any plant or undertaking to investigate processes, take samples, examine records and check abatement facilities.

The International Boundary Waters Treaty Act, R.S.C. 1985, c. I-17, contains provisions regarding water levels and channel diversions, and provides that boundary waters and water flowing across the boundary shall not be polluted by either Canada or the U.S. to the injury of health or property of the other country.⁽²⁶⁾

The Navigable Waters Protection Act, R.S.C. 1985, c. N-22, as amended, makes it an offence to dump into navigable waters, or into water that flows into such waters, rubbish (particularly the solids discarded by the logging and pulp and paper industries) that is liable to interfere with navigation. The dumping of any stone, gravel, earth, cinder or ashes likely to sink to the bottom of any navigable tidal water is also prohibited. Regulations made under the Act require that debris accumulating in water be removed to the satisfaction of the Minister of Transport.

Regulations under the Pilotage Act, R.S.C. 1985, c. P-14, require a pilot aboard a ship, to make known by the fastest means available, details of any incident or accident likely to damage or pollute the surrounding environment.⁽²⁷⁾

(25) Northern Inland Waters Regulations, CRC 1978, c. 1234.

(26) Reference could also be made to the International River Improvement Act, R.S.C. 1985, c. I-20; and the International River Improvement Regulations, CRC 1978, c. 982, as amended.

(27) Atlantic Pilotage Authority Regulations, CRC 1978, c. 1264, s. 25 as amended.

Part VI of the Canadian Environmental Protection Act deals with ocean dumping, that is, the deliberate disposal of substances from ships, aircraft, platforms or other man-made structures. Dumping by ships in Canadian waters or by Canadian ships on the high seas is prohibited except by ministerial permit, or to avoid danger, in which case it must be reported to an inspector under the Act. The Act does not apply to accidental discharges, to discharges which are incidental to the normal operation of ships or aircraft, to mineral resource exploitation at sea, or to fresh water areas of Canada.

The Act lists factors to be taken into account by the Minister in awarding a permit to dump. A dissatisfied applicant may compel the Minister to establish a Review Board to review the decision, while a member of the public may request the Minister to do so.

The courts are empowered to impose fines, or terms of imprisonment on violators or to issue injunctions. The federal Crown is also given a civil remedy to recover its costs in mitigating or repairing damage caused by violations. A court may also order a ship to be forfeit after a conviction for an offence.

Regulations under the old Ocean Dumping Control Act, R.S.C. 1985, c. 0-2, dealt with procedures for acquiring dumping permits, permit fees, maximum allowable concentrations of the substance or material to be dumped and the filing of reports of emergency dumpings.⁽²⁸⁾ These regulations have been continued under CEPA.

The Canada Ports Corporation Act, R.S.C. 1985, c. C-9, as amended,⁽²⁹⁾ provides that regulations may be made for all matters in connection with vessels and aircraft navigating the harbours and their mooring, berthing, discharging or loading.

(28) Ocean Dumping Control Regulations, CRC 1978, c. 1243. Reference could also be made to the Maritime Code Act, S.C. 1977-78, c. 41 as amended [not yet proclaimed in force.]

(29) Formerly the National Harbours Board Act.

Regulations under the Migratory Birds Convention Act, R.S.C. 1985, c. M-7, prohibit any person from permitting the flow of oil in any water or area frequented by migratory birds.⁽³⁰⁾

The Animal Disease and Protection Act,⁽³¹⁾ R.S.C. 1985, c. A-11 provides a penalty for putting the carcass of an animal that has died of disease into any waters. Regulations under the Act prohibit the discharge from ships of manure, garbage or other refuse in any port or waters of Canada.⁽³²⁾

AIR POLLUTION

Various parts of the Canadian Environmental Protection Act regulate air pollution. Parts I (Environmental Quality Objectives, Guidelines and Codes of Practice), II (Toxic Substances), and IV (Federal Departments, Agencies, Crown Corporations, Works, Undertakings and Lands), previously discussed under those headings, are all relevant here, since references in the 1971 Clean Air Act to air pollution/quality/contaminants have been replaced in CEPA by inclusive "environment" terminology. Environment is defined to include "air" and "all layers of the atmosphere." The Clean Air Act, R.S.C. 1985, c. C-32 has been repealed since the enactment of CEPA but regulations under it have been continued.

Regulations prescribe the maximum concentrations of lead in "lead-free" gasoline and phosphorous in "phosphorous-free" gasoline.⁽³³⁾ In addition, they control the permitted emissions in the operation of specific industries or activities (secondary lead smelters,⁽³⁴⁾

(30) Migratory Birds Regulations, CRC 1978, c. 1035, as amended.

(31) Formerly, the Animal Contagious Diseases Act, renamed by 1974-75-76, c. 86, s. 2.

(32) Animal Disease and Protection Regulations, CRC 1978, c. 296 as amended.

(33) Leaded Gasoline Regulations, CRC 1978, c. 409 as amended; Lead Free Gasoline Regulations, CRC 1978, c. 408.

(34) Secondary Lead Smelter National Emission Standards Regulations, CRC 1978, c. 412, as amended.

chlor-alkali mercury,⁽³⁵⁾ and asbestos mining and milling⁽³⁶⁾) and the provision of information to federal authorities on the release of certain poisonous substances (arsenic⁽³⁷⁾ and mercury⁽³⁸⁾). On a more general basis, regulations set out objectives for ambient air quality.⁽³⁹⁾

Only Part V of CEPA is concerned with air pollution per se. It deals with international air pollution or, more specifically, acid rain. The Act provides that the Governor in Council may make regulations to control or prevent air pollution that is in another country or that would violate an international agreement "if the Governor in Council is satisfied that that other country has granted Canada substantially the same rights with respect to the prevention or control of air pollution as are granted to that country under this Part" (section 63(1)(a)). These regulations would apply only to sources of air pollution from federal works or undertakings unless the governments of the affected provinces had been consulted about the applicability of provincial laws. The federal regulations would be subject to objection and review. They would not apply in a province which had equivalent provisions. Anyone contravening the regulations is liable, on summary conviction, to a maximum fine of \$400,000 and/or six months' imprisonment or on indictment to a maximum fine of \$1 million and/or three years' imprisonment.

Regulations made under the Railway Act, R.S.C. 1985, c. R-3, as amended, and National Transportation Act, 1987, R.S.C. 1985, c. 28 (3rd Supp.), as amended, entitled the "Air Pollution and Smoke Control Regulations" regulate and control air pollution from railways within the

(35) Chlor-Alkali Mercury National Emission Standards Regulations, CRC 1978, c. 406.

(36) Asbestos Mining and Milling National Emission Standards Regulations, CRC 1978, c. 405, as amended.

(37) Metallurgical Industries Arsenic Information Regulations, CRC 1978, c. 410.

(38) Metallurgical Industries Mercury Information Regulations, CRC 1978, c. 411.

(39) Ambient Air Quality Objectives, CRC 1978, c. 403; Ambient Air Quality Objectives No. 2, CRC 1978, c. 404; Ambient Air Quality Objectives, No. 3, SOR/78-74.

legislative authority of Parliament. Outside Ontario, the Regulations are enforced by municipal officers and therefore only apply in municipalities with by-laws for the regulation, control or prohibition of smoke or other air pollutants.⁽⁴⁰⁾ In Ontario, the delegation is to provincial officers under the provincial Environmental Protection Act, R.S.O. 1980, c. 141.

Similarly, regulations pursuant to the Canada Shipping Act, R.S.C. 1985, c. S-9 limit the density of smoke emissions from ships.⁽⁴¹⁾

The Motor Vehicle Safety Act, R.S.C. 1985, C. M-10 provides for safety standards which are applicable to new automobiles. Regulations control the amount of hydrocarbons, carbon monoxide and oxides of nitrogen content in exhaust emissions, the opacity of exhaust emissions of diesel powered trucks and buses and the evaporative emissions from gasoline powered passenger cars.⁽⁴²⁾

Another type of air pollution, recently the subject of federal legislation, is indoor air pollution caused by tobacco smoking, both in the workplace and in federally-regulated modes of transport.⁽⁴³⁾ The Non-Smokers' Health Act, R.S.C. 1985, c. 15 (4th Supp.), is an enactment that is intended to control smoking in federally-regulated workplaces and on common carriers under federal jurisdiction (aircraft, passenger ships, passenger railway trains and certain passenger motor vehicles). The Act basically bans smoking in any workspaces under the control of an employer and on common carriers except in designated smoking areas. It also adds products manufactured from tobacco to the list of products covered by the Hazardous Products Act, R.S.C. 1985, c. H-3, as amended, thereby enabling the Governor in Council to regulate their advertising, sale and import. This provision, however, is subject to override by the Tobacco Products Control Act, R.S.C. 1985, c. 14 (4th Supp.).

(40) CRC 1978, c. 1143.

(41) CRC 1978, c. 1404.

(42) Motor Vehicle Safety Regulations, CRC 1978, c. 1038.

(43) For a broader overview of the tobacco smoking issue, please see Library of Parliament, Research Branch publication 88-22E, Tobacco Smoking.

Other government measures to restrict smoking include new regulations enacted under the Aeronautics Act⁽⁴⁴⁾ to ban smoking on short-haul flights, and a government policy that smoking in all federal public service workplaces is completely prohibited as of 1 January 1989.⁽⁴⁵⁾

NOISE POLLUTION

Under the Aeronautics Act, R.S.C. 1985, c. A-2, as amended, the federal Minister of Transport has complete authority, subject to Cabinet approval, to control and regulate the manner of operation of all non-military aircraft. Regulations pursuant to the Act restrict the noise level from certain aircraft,⁽⁴⁶⁾ prescribe minimum altitudes for aircraft movements⁽⁴⁷⁾ and regulate sonic and supersonic flights.⁽⁴⁸⁾

Pursuant to the Motor Vehicle Safety Act, R.S.C. 1985, c. M-10, regulations have been made limiting the noise emission levels that certain types of motor vehicles, including snowmobiles, either manufactured in or imported into Canada may emit at the time of manufacture or importation.⁽⁴⁹⁾

Under the Railway Act, the Canadian Transport Commission may impose speed limits and regulate the use of whistles on trains in urban areas.

Noise exposure levels have also been established under the Canada Labour Code, R.S.C. 1985, c. L-2, which is applicable to employment

(44) Air Regulations, Amendment, S.O.R./87-554 and S.O.R./87-555.

(45) Personnel Management Manual, Vol. 12 Chap. 1, Appendix D, "Public Service Smoking Policy."

(46) Aircraft Noise Certification Order, CRC 1978, c. 27; Aircraft Noise Emission Standards and Certification Orders, SOR/86-73; and Aircraft Noise Operating Restrictions Order, SOR/86-74. Reference should also be made to the various Airport Zoning Regulations passed pursuant to the Act.

(47) Air Regulations, CRC 1978, c. 2.

(48) Sonic and Supersonic Flight Order, CRC 1978, c. 64.

(49) Motor Vehicle Safety Regulations, CRC 1978, c. 1038.

upon or in connection with the operation of any federal work, undertaking, or business other than one of a local or private nature in the Territories.(50)

Provisions of the Criminal Code relating to causing a disturbance could also be applicable to noise pollution.(51)

POLLUTION IN PARTICULAR INDUSTRIES

In addition to legislation of general application, laws regulating specific industries or sectors of the economy within federal jurisdiction contain provisions on environmental pollution caused by specific activities. Some of the more important of these are discussed below.

A. Oil and Gas

The Oil and Gas Production and Conservation Act, R.S.C. 1985, c. 0-7, s. 14, permits regulations⁽⁵²⁾ to be made prescribing the measures necessary to prevent pollution of air, land or water as a result of exploration and the drilling for or the production, storage, transportation, distribution, measurement, processing or handling of oil or gas or substances associated with them in the Yukon and Northwest Territories.⁽⁵³⁾ It is an offence to commit waste which includes its "ordinary meaning" as well as "waste as understood in the oil and gas industry."⁽⁵⁴⁾ In the latter case "waste" refers to the inefficient or excessive use of oil or gas. An official under the Act may order that operations be shut down when necessary to prevent damage to persons or property or to prevent pollution when waste is being committed.⁽⁵⁵⁾

(50) Canada Noise Control Regulations, CRC 1978, c. 1006, as amended.

(51) s. 175. See also s. 176 (disturbance of religious assembly or similar meeting).

(52) Canada Oil and Gas Drilling Regulations, SOR/79-82, as amended.
Canada Oil and Gas Operations Regulations, SOR/83-149.

(53) s. 14(q).

(54) s. 18.

(55) s. 19.

The Energy Supplies Emergency Act, R.S.C. 1985, c. E-9, as amended, empowers the Energy Supplies Allocation Board, during periods of national emergency, to make regulations to relax laws regarding the discharge of sulphur compounds into the atmosphere in order to permit conservation of a controlled product with the least detrimental effect on public health and the environment. Permits would be required for operating in accordance with the less stringent standards.

The National Energy Board Act, R.S.C. 1985, c. N-7, as amended, permits regulations to be made for the protection of property and the safety of the public and of employees in the operation of a pipeline. The Board requires measures to protect the environment against pollution in considering the grant of a certificate to construct and operate an oil or gas pipeline. (56)

B. Nuclear Energy

The Atomic Energy Control Act, R.S.C. 1985 c. A-16, enables regulations to be made for developing, controlling, supervising and licensing the production, application and use of atomic energy. In its licensing procedure the Atomic Energy Board requires a comprehensive safety report and strictly controls the construction and operation of nuclear energy plants. There are health and safety regulations to protect individuals from emissions. (57)

The Radiation Emitting Devices Act, R.S.C. 1985, c. R-1, prohibits the importing, selling or leasing of radiation emitting devices which do not comply with the standards set out. Regulations may be made to regulate the design, construction and functioning of such devices.

C. Transportation

The Transportation of Dangerous Goods Act, R.S.C. 1985, c. T-19, as amended, applies to the handling and transporting of dangerous

(56) The Northern Pipeline Act, R.S.C. 1985, c. N-26, is similar. Reference could also be made to the Oil and Gas Production and Conservation Act.

(57) Atomic Energy Control Regulations, CRC. 1978 c. 365, as amended.

goods, by any means of transport, whether or not for hire or reward, and whether or not the goods originate from or are destined for places in Canada. There are certain exemptions from this broad application, including dangerous goods under the control or direction of the Minister of National Defence, the transporting of oil and gas by pipeline, and the transporting of dangerous goods in bulk in vessels within the meaning of the Canada Shipping Act.

It is an offence to handle, offer for transport or to transport any dangerous goods as defined in the Act and regulations, unless all prescribed safety requirements are complied with and all packaging and containers meet applicable safety standards. Penalties of up to \$100,000 are prescribed for violations. Inspectors appointed under the Act have power to remedy situations where there is or has been a discharge, emission or escape of dangerous goods or where there is a serious and imminent danger of this. (58)

The federal government may recover the costs of remedial action under the Act. There must be evidence of financial responsibility in the form of insurance and/or an indemnity bond, and there is provision for public inquiries. The Minister of Transport is empowered to require disclosure of information on the formula, composition or chemical ingredient of any product, substance or organism and of any other information as he or she deems necessary for the proper enforcement of the Act.

D. Agriculture

The Fertilizers Act, R.S.C. 1985 c. F-10, as amended, provides for control over the fertilizers used in agriculture and prohibits

(58) Transportation of Dangerous Goods Regulations, SOR/85-77, as amended. The following regulations also govern the transportation of dangerous goods and remain in effect, although it is expected that they will ultimately be superseded: Dangerous Goods Shipping Regulations, SOR/81-951 as amended; Explosives Regulations, CRC 1978, c. 599, as amended, ss. 38-66; the Transport Packaging of Radioactive Materials Regulations, SOR/83-74 as amended. Reference could also be made to the Safe Containers Convention Act, R.S.C. 1985, c. s-1, as amended.

any that contain ingredients or properties harmful to plant growth. The regulations under this Act establish standards for fertilizers and prescribe their form and composition. (59)

The Pest Control Products Act, R.S.C. 1985, c. P-9, as amended, requires that any product to be used in pest control must be registered before it may be imported, exported or sold. Furthermore, the Act prohibits the manufacture, storage or use of any pest control product under "unsafe conditions." Regulations under the Act prescribe the composition of these products and impose standards for their labelling, packaging and storage. (60)

(59) Fertilizers Regulations, CRC 1978, c. 666.

(60) Pest Control Products Regulations, CRC 1978, c. 1253 as amended. Other legislation applicable to agriculture includes the Plant Quarantine Act, RSC 1985, c. P-5, and the Seeds Act, R.S.C. 1985, c. S-8.

